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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,621	07/07/2003	Kazuhiko Hashimoto	MTS-3282US1	2604
23122	7590	12/15/2006	EXAMINER	
RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			ASTORINO, MICHAEL C	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/614,621	Applicant(s) HASHIMOTO ET AL.	
	Examiner Michael C. Astorino	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 34-47, 53-63 and 83-89 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-47, 53-63 and 83-89 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/7/2003</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of with traverse in the reply filed on October 7, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Specification***

Applicant should update the first line of the specification to include the updated information regarding divisional patent application 09/981,333 as US Patent Number 6,616,607.

The disclosure is objected to because of the following informalities: the words "uncarry" and "uncarried" are not words in the English language. Appropriate correction is required.

Additionally, the Applicant may want to change the term "arbitrarily" in the specification. In any case the Applicant should avoid adding new matter to the specification and/or claims.

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which the applicant may become aware in the specification.

### *Claim Objections*

In regards to claim 63, line 4, “wireless” should be changed to “wireless communication.”

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 38 is rejected as a single means claim. See MPEP 2164.08(a). A single means claim, i.e., where a means recitation does not appear in combination with another recited element of means, is subject to an undue breadth rejection under 35 U.S.C. 112, first paragraph. In re Hyatt, 708 F.2d 712, 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983) (A single means claim which covered every conceivable means for achieving the stated purpose was held nonenabling for the scope of the claim because the specification disclosed at most only those means known to the inventor.). When claims depend on a recited property, a fact situation comparable to Hyatt is possible, where the claim covers every conceivable structure (means) for achieving the stated property (result) while the specification discloses at most only those known to the inventor.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 40-45, 53-56, 58-59, and 61-62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Additionally all pending claims dependent from these claims are rejected as being dependent on an indefinite rejected claim.

In regards to claims 40-45, 53-56, and 58-59, the word “substantial” in these claims is indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claims 46-47, 57, the word “uncarry” in these claims is indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. “Uncarry” is not a word in the English language.

In regards to claims 61-62, the word “arbitrarily” in these claims is indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to the pending claims, only those claims using “means for” or “step for” modified by some functional language, as long as it is not modified by sufficient structure, material, or acts for achieving the specified function, will invoke 112.6<sup>th</sup> paragraph. For example, “step of” or “processing means”, does not invoke 112.6<sup>th</sup> paragraph. If the applicant chooses to invoke 112.6<sup>th</sup> paragraph without using “means for” or “step for”, applicant may do so by explicitly stating so in the subsequent response to this office action.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

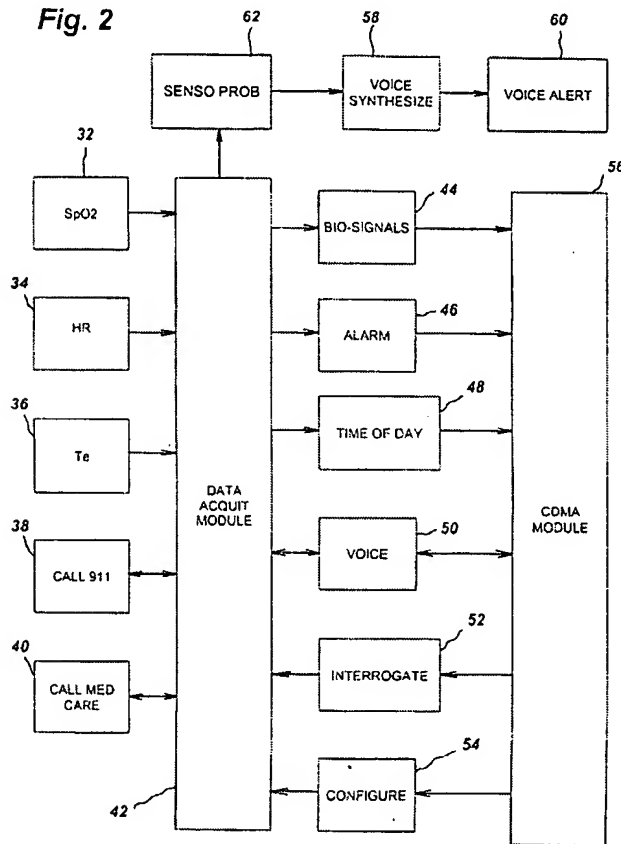
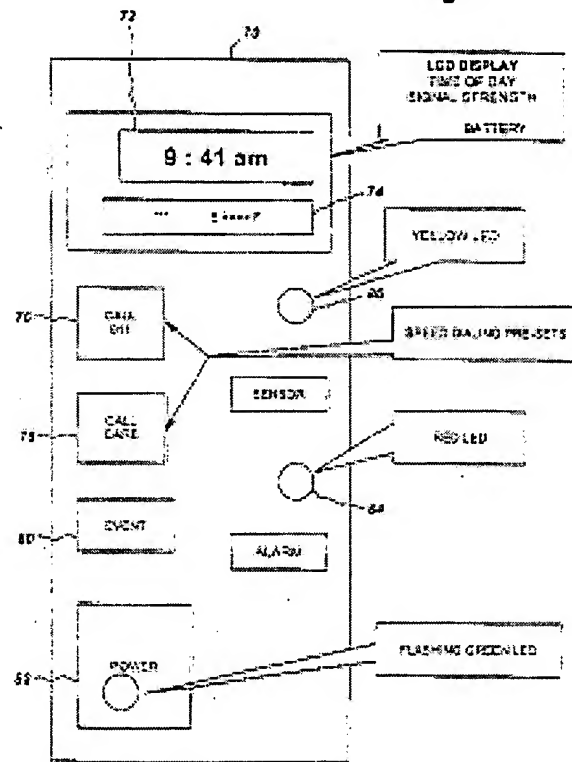
Claims 34-47, 53-63, and 83-89 are rejected under 35 U.S.C. 102(e) as being anticipated by Schulze et al. US Patent Number US Patent Number 6,443,890 B1.

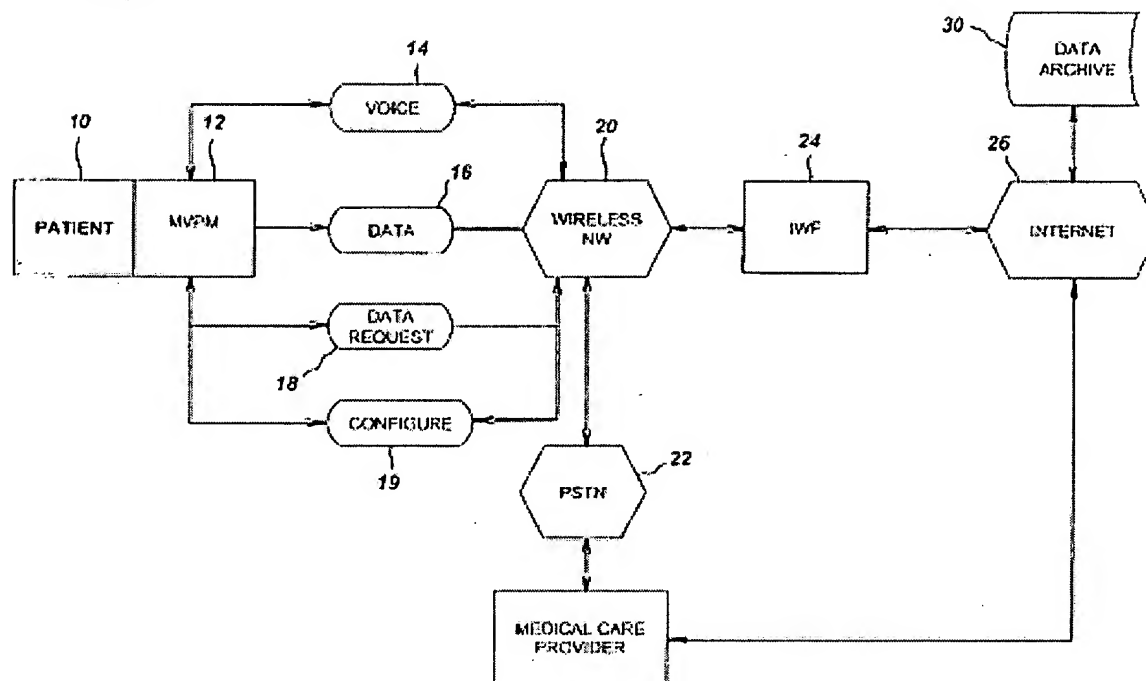
In regards to the claims, Schulze et al. teaches sensors (32, 34, 36; and see column 3, lines 40-51) transmit data to the data acquisition module (42). The information is then transmitted to CDMA module (52) then to a wireless network (20) the over the Internet to a data archive or medical care provider (see figure 1). The MVPM (12) is wearable device since it is capable of being worn on the body. (See also figures 2-3)

Regarding an alarm condition Schulze et al. teaches, “In addition to simply acquiring data, the data acquisition module 42 also notes any alarm condition 46 and transmits that information via CDMA module 56 to the Internet where it can be accessed by medical care provider. In addition, data acquisition module 42 transmits the time of day 48 with any transmission of alarm information or biosensor information. As noted earlier, the various alarm conditions can be reconfigured by the health care provider over the internet and the wireless network without any patient interaction.” See column 5, lines 7-14. Additionally, see column 5, lines 37-60. In regards to an “uncarry means,” it is the examiner’s position that Schulze et al.’s

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"Sensor Off" signal is sufficient to reject the limitation. In regards to claim 53, Schulze et al. teaches detecting and sending alarms conditions or physiological variables event occurrences per patient action. (Column 3, lines 49-50, see in context lines 40-51). In regards to claim 60-62, see element numbers 84, and 86, see also column 5, lines 36-43; and see element numbers 76 and 80.

**Fig. 2****Fig.3**

**Fig. 1**

### **Conclusion**

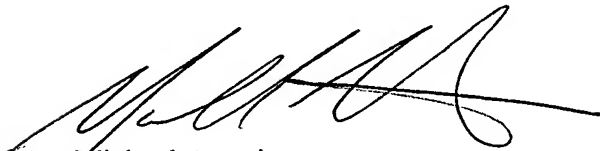
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Michael Astorino', with a long horizontal stroke extending to the right.

Michael Astorino  
December 10, 2006